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May 23, 2003

The Honorable Gary E. Walsh
 Executive Director
 Public Service Commission of South Carolina
 Post Office Drawer 11649
 Columbia, South Carolina 29211



Re: Application of BellSouth Public Communications, Inc. for Approval to Divest
 Itself of Its Assets
 Docket No.: 2003-77-C

Dear Mr. Walsh:

Enclosed for filing are the original and fifteen copies of BellSouth Public Communications, Inc.'s ("BSPC's") Response to and Motion to Deny Petitioner's Motions to Intervene and to Hold Proceeding in Abeyance ("Response") in the above-referenced matter.

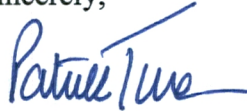
By effectively asking the Public Service Commission of South Carolina ("the Commission") to require BSPC to remain in the competitive South Carolina payphone marketplace longer that BSPC desires, the Women's Shelter ("Petitioner") is asking a State commission to impose a regulatory constraint that would inhibit BSPC's ability to exit the payphone marketplace. The FCC, however, has entered Orders and adopted regulations that prohibit regulatory constraints that inhibit the ability of a payphone service provider to exit the payphone marketplace. By virtue of 47 U.S.C. §276(c), these rulings preempt any inconsistent state requirements. Because the Petitioner is seeking relief that the Commission is not allowed to grant, the Commission should, as a matter of law, deny both the Petition to Intervene and the Motion to Hold Proceedings in Abeyance.

As explained more fully in the Response, taking this action will not affect the Petitioner's ability to obtain telephone service at affordable rates for its constituents to use, and it will not affect the Commission's ability to revisit its prior determination that there is no need for a public interest payphone program in South Carolina should the Commission be inclined to do so.

The Honorable Gary E. Walsh
Page Two
May 23, 2003

By copy of this letter, I am serving this response on all parties of record and on the General Counsel for the Commission.

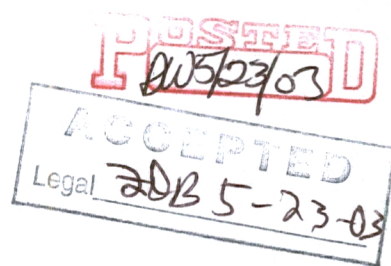
Sincerely,



Patrick W. Turner
Attorney Representing BellSouth
Public Communications, Inc.

PWT/nml
Enclosure
491840

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-77-C



IN RE:

Application of BellSouth Public
Communications, Inc. for Approval To
Divest Itself of Its Assets

RECEIVED
2003 MAY 23 AM 11:49
SC PUBLIC SERVICE
COMMISSION

**BELLSOUTH PUBLIC COMMUNICATIONS, INC'S RESPONSE TO
AND MOTION TO DENY PETITIONER'S MOTIONS
TO INTERVENE AND TO HOLD PROCEEDING IN ABEYANCE**

BellSouth Public Communications, Inc. ("BSPC") respectfully files its response to, and motion to deny, the Petition to Intervene and to the Motion to Hold Proceedings in Abeyance that has been filed by the Women's Shelter ("the Petitioner").

I. INTRODUCTION

Section 276 of the federal Telecommunications Act of 1996 ("the 1996 Act") addresses the provision of payphone services, and it requires the Federal Communications Commission ("FCC") to adopt regulations implementing its provisions. In the words of Congress, "to the extent that any State requirements are inconsistent with the [FCC's] regulations, the [FCC's] regulations on such matters shall preempt such State requirements."¹ In the second paragraph of its Order implementing Section 276 of the 1996 Act, the FCC unequivocally states that "we seek to eliminate those regulatory

¹ See 47 U.S.C. §276(c)(emphasis added).



constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones."²

By effectively asking the Public Service Commission of South Carolina ("the Commission") to require BSPC to remain in the competitive South Carolina payphone marketplace longer than BSPC desires, the Petitioner is asking a State commission to impose a regulatory constraint that would inhibit BSPC's ability to exit the payphone marketplace. Both Congress and the FCC have made it clear that no such constraint is allowed. Because the Petitioner is seeking relief that the Commission is not allowed to grant, the Commission should, as a matter of law, deny both the Petition to Intervene and the Motion to Hold Proceedings in Abeyance.³

Taking this action will not affect the Petitioner's ability to obtain telephone service at affordable rates for its constituents to use.⁴ The Commission, for example, has entered orders that allow the Petitioner to obtain residential lines at Lifeline rates. This means that even if no other payphone service provider would place a payphone on the Petitioner's premises, the Petitioner still can obtain a telephone line from BellSouth

² Report and Order, *In the Matter of Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-388 11 F.C.C.R. 20,541 at ¶2 (September 20, 1996) ("Payphone Order")(emphasis added).

³ As explained in more detail below, BSPC is not suggesting that the Commission cannot revisit its prior determination that there is no need for a public interest payphone program in South Carolina, if that is something that the Commission is inclined to do. The Petitioner, however, has not simply asked the Commission to revisit that prior determination. Instead, the Petitioner has asked the Commission to hold BSPC hostage in a competitive marketplace in which it no longer wishes to compete until the Commission addresses the Petitioner's request. The Commission, therefore, should deny both the Petition and the Motion, making it clear that these denials are without prejudice to the ability of the Petitioner (or any other interested person or entity) to ask the Commission to revisit its prior public interest payphone determination in a separate and unrelated proceeding.

⁴ This is discussed in more detail in Section IV.B below.

Telecommunications, Inc. ("BST") for its constituent's use for approximately \$3.00 per month. If the Petitioner wants to prevent toll calls from being placed on that line, BST offers service ranging from \$1.10 per month to \$3.50 per month that would allow the Petitioner to do so. If the Petitioner further wants to block the delivery of its number when its constituents use that line, the Petitioner can either obtain permanent calling number delivery blocking from BST, or its constituents could use the *67 feature on a call-by-call basis at no charge.

II. BRIEF HISTORY OF PAYPHONE-RELATED ACTIVITIES.

Prior to explaining why the relief sought by the Petitioner is in violation of controlling federal law, BSPC will briefly explain that: (a) BSPC's exit from the payphone marketplace will not impact any payphone service provider's ability to receive payphone access lines from BST, other local exchange carriers ("LECs"), or competitive local exchange carriers ("CLECs"); (b) the FCC has deregulated and detariffed the payphone marketplace in which BSPC and numerous other payphone service providers compete; and (c) BSPC has complied with the FCC's Payphone Orders.

A. BSPC's Exit From The Competitive Payphone Marketplace Will Not Affect The Ability Of Any Payphone Service Provider To Continue Purchasing Payphone Access Lines From BST, Other LECs, and CLECs.

BSPC's decision to exit the competitive payphone marketplace in South Carolina will not affect any payphone service provider's ability to order access lines that it can attach to its payphone sets and other customer premise equipment ("CPE") in order to provide payphone services to the public. BSPC does not provide these access lines in South Carolina, or in any other state. Instead, BST, other LECs, and CLECs offer tariffed payphone access lines to BSPC and other payphone service providers on a

nondiscriminatory basis.⁵ BSPC and other payphone service providers then attach these access lines to their payphone sets and other CPE in order to provide payphone services to the public.

The FCC's Payphone Orders make it clear that payphone access lines are separate and distinct from the type of payphone services that are offered by payphone service providers like BSPC. The FCC, for instance, required LECs to unbundle basic transmission services (such as payphone access lines) from CPE (such as the payphone sets), and it required incumbent local exchange companies ("ILECs") like BST to set rates for intrastate payphone-specific services in accordance with the FCC's requirements.⁶ When this Commission applied the FCC's rulings to BST's rates for payphone access lines, it ordered BST to significantly reduce those rates and to pay refunds to payphone service providers.⁷ In a subsequent Order, the Commission approved a BST tariff filing that further reduced BST's rates for payphone access lines to even lower rates.⁸ These low payphone access line rates remain in effect today.

⁵ See, e.g., BST's South Carolina General Subscriber Service Tariff A7.4.

⁶ See Payphone Order at ¶146.

⁷ See Order Setting Rates for Payphone Lines and Associated Features, *In Re Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order No. 1999-285 in Docket No. 97-124-C (April 19, 1999); Order Ruling on Requests for Reconsideration and Clarification, *In Re Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order No. 1999-497 in Docket No. 97-124-C (July 19, 1999).

⁸ See Order Reducing PTAS Rate, *In Re Request of BellSouth Telecommunications, Inc. for Approval of Revisions to its General Subscriber Service Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order No. 2001-1054 in Docket No. 97-124-C (December 4, 2001).

It is clear, therefore, that BSPC's exit from the payphone market will have no effect on any payphone service provider's ability to continue receiving payphone access lines from BST, from any other LEC, or from a CLEC at rates that are approved by this Commission.

B. The FCC Has Ruled That The Payphone Marketplace That BSPC Is Exiting Is Competitive, Deregulated, and Detariffed.

As noted above, BSPC is one of many payphone service providers competing in the South Carolina payphone marketplace today. It is not surprising, therefore, that in its first Payphone Order, the FCC concluded that "incumbent LEC payphones must be deregulated, detariffed and classified as CPE for regulatory purposes."⁹ The FCC reached this conclusion because, among other things, "the market for payphone CPE is competitive," and "it is not in the public interest to continue to treat LEC payphones as regulated equipment, while treating independent payphones as CPE, and that deregulation of payphones is consistent with the procompetitive approach set forth in Section 276 [of the 1996 Act]."¹⁰ The FCC also noted that "the market for payphone CPE is competitive and LECs do not have any specific advantage in marketing payphone services in a deregulated payphone market."¹¹

C. BSPC Has Been Providing Payphone Services In Compliance With The FCC's Payphone Orders

Although the FCC expressly ruled that neither regional Bell operating companies ("RBOCs"), ILECs, nor other LECs are required to provide payphone services through

⁹ See Payphone Order at ¶143 (emphasis added). CPE stands for customer premise equipment. See Order, *In the Matter of Wisconsin Public Service Commission*, 17 FCC Rcd. 2051 at ¶11.

¹⁰ *Id.* (emphasis added).

¹¹ *Id.* at ¶149.

separate affiliates,¹² it provided that "the BOCs or other incumbent LECs are free to provide these services using structurally separate affiliates if they choose to do so."¹³ To the extent that a BOC decided to provide payphone services through a structurally separate affiliate, the FCC specified the assets that were to be transferred from the BOC to the separate affiliate,¹⁴ and it specified the accounting treatment to be accorded those transferred assets.¹⁵ BellSouth decided to provide payphone service through a separate affiliate, BSPC, in compliance with these FCC requirements.

Accordingly, in 1997, this Commission entered an Order stating that "[BST's] application to transfer its South Carolina payphone assets to BSPC as set forth in the testimony of Mr. Lohman and in BellSouth's application is hereby approved."¹⁶ The Commission also entered an Order granting BSPC's request for certification to "sell, vend, and install coin or coinless telephones in South Carolina"¹⁷ Finally, the Commission entered an Order granting BSPC a Certificate of Public Convenience and Necessity "to provide collect-only call capability for inmate and operator services (local and intraLATA) to confinement facilities in South Carolina, using automated Company

¹² *Id.* at ¶145.

¹³ *Id.* at ¶157 (emphasis added).

¹⁴ *Id.* ¶¶ 159-60

¹⁵ *Id.* at ¶¶161-71.

¹⁶ Order Approving Asset Transfer, *In Re Application of BellSouth Telecommunications, Inc. for approval to Transfer its Pay Telephone Assets to BellSouth Public Communications, Inc.*, Order No. 97-311 in Docket No. 97-046-C (April 15, 1997).

¹⁷ Order Granting Certification, *In Re: Request of BellSouth Public Communications, Inc., 75 Bagby Drive, Homewood, AL 35209, for Certification to Sell, Vend, and Install Coin or Coinless Telephones in South Carolina*, Order No. 97-65 in Docket No. 85-150-C at 1 (January 23, 1997).

owned telephones and alternate operator service to the general public through Company owned payphones on a local and intraLATA basis."¹⁸

III. BY ASKING THE COMMISSION TO REQUIRE BSPC TO REMAIN IN THE COMPETITIVE PAYPHONE MARKETPLACE IN SOUTH CAROLINA LONGER THAT BSPC DESIRES, THE PETITIONER IS SEEKING RELIEF THAT IS PROHIBITED BY FEDERAL LAW.

The Petitioner has asked the Commission to "hold this Proceeding in abeyance until the Commission implements a public interest payphone program."¹⁹ Section 276 of the Act addresses the provision of payphone services, and it requires the FCC to adopt regulations implementing its provisions. In the words of Congress, "to the extent that any State requirements are inconsistent with the [FCC's] regulations, the [FCC's] regulations on such matters shall preempt such State requirements."²⁰ As explained below, the FCC has adopted a regulation requiring State commissions to remove any requirements that impose market entry or exit requirements on payphone service providers like BSPC. The relief sought by the Petitioner, therefore, is relief that is prohibited by federal law.

The FCC repeatedly has stated that inhibiting a payphone service provider's

¹⁸ Order Approving Certificate, In Re: Application of BellSouth Public Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Alternate Operator and Inmate Telecommunications Services within the State of South Carolina, Order No. 97-268 in Docket No. 97-047-C at 3 (April 1, 1997). The FCC also required BOCs like BellSouth to file comparably efficient interconnection ("CEI") plans with the FCC "describing how they will comply with the Computer III unbundling, CEI parameters, accounting requirements, CPNI requirements as modified by Section 222 of the 1996 Act, network disclosure requirements, and installation, maintenance, and quality nondiscrimination requirements." See Payphone Order at ¶199. See also Id. at ¶¶202-207. BellSouth filed its CEI plan with the FCC in compliance with these requirements, and the FCC entered an order approving BellSouth's plan. See Order, In the Matter of BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket No. 96-128, FCC 97-792 (April 15, 1997) ("BellSouth CEI Order").

¹⁹ See Motion to Hold Proceeding in Abeyance at p. 4; *Accord* Petition to Intervene at p. 3.

²⁰ See 47 U.S.C. §276(c)(emphasis added).

ability to exit the marketplace as the Petitioner is asking this Commission to do is simply bad policy.²¹ The FCC, for example, noted that the competition that existed in the payphone market in 1996 "has been significantly distorted by government regulation of prices, regulatory barriers to entry and exit, as well as by significant subsidies from other telecommunications services."²² Recognizing the existence of many state "requirements that must be fulfilled before a [payphone service provider] can enter or exit the payphone marketplace," the FCC concluded "that these state regulations are barriers to a fully competitive payphone market"²³ The FCC clearly stated that "ease of entry and exit in this market will foster competition and allow the market, rather than regulation, to dictate the behavior of the various parties in the payphone industry."²⁴

The FCC, therefore, concluded that while the States "remain free at all times to impose regulations, on a competitively neutral basis, to provide consumers with information and price disclosure," the States are required to remove "in particular, those rules that impose market entry or exit requirements."²⁵ In addition to making this clear and unequivocal statement in its Payphone Order, the FCC also adopted a regulation that says:

Each state must review and remove any of its regulations applicable to payphones and payphone service providers that impose market entry or exit requirements."²⁶

²¹ Conversely, the FCC has noted that eliminating requirements that inhibit the ability to exit the payphone market is good policy. *See, e.g.* Payphone Order at ¶12. ("A payphone can be removed and used at another location, which facilitates entry and exit. If a PSP can easily redeploy its assets, it will be more willing to place a payphone in response to a small increase in price, because the risk of such placement is lower.").

²² Payphone Order at ¶13.

²³ *Id.* at ¶59.

²⁴ *Id.*

²⁵ *Id.* at ¶60.

²⁶ *See* 47 C.F.R. §64.1330(a).

This regulation is entirely consistent with Congress' directive that "to the extent that any State requirements are inconsistent with the [FCC's] regulations, the [FCC's] regulations on such matters shall preempt such State requirements."²⁷

Several entities, including various State commissions, asked the FCC to reconsider this regulation and its reasoning supporting it, but the FCC declined. In addressing these requests, the FCC stated that:

burdensome state entry and exit requirements would be inconsistent with the rules we have adopted to implement the congressional mandate embedded generally in Section 276 of the Act, and, more specifically, in the requirements of Section 276(b)(1)(A) to ensure fair compensation for each and every call using a payphone. For these reasons, we are satisfied that our directive to the states to eliminate such burdens is within the preemption authority granted to us by Congress in Section 276(c). Accordingly, we deny requests by the states that we reconsider our conclusions in this regard.²⁸

After the FCC entered these Orders, the Indiana Utility Regulatory Commission reviewed its existing regulations to determine whether they were consistent with the FCC's decision. One of those regulations required each telephone utility to supply at least one coin-operated public telephone in each exchange that the utility served. After applying the principles set forth in the FCC's Payphone Orders to that rule, the Indiana Commission entered an Order stating:

we agree that [the rule] is an exit barrier, and as such is no longer enforceable. We instruct our General Counsel to take the necessary steps to have this regulation deleted from our Service Standards.²⁹

The Indiana Commission was correct – any requirement that an entity remain in the

²⁷ See 47 U.S.C. §276(c).

²⁸ Order on Reconsideration, *In the Matter of Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-439 11 FCC Rcd. 21,233 at ¶139 (November 8, 1996) ("Payphone Reconsideration Order").

²⁹ See Order, *Re Access Charge Reform and Universal Service Reform*, Cause No. 40785, 1998 WL 999982 at *16 (Sept. 18, 1998). Attachment A is a copy of this Order.

competitive payphone marketplace when it no longer desires to compete in that marketplace is an impermissible and unenforceable barrier to exit. The relief requested by the Petitioner is exactly such an impermissible and unenforceable barrier to exit.

One more point is worth noting. In its Payphone Reconsideration Order, the FCC clarified that a state may take actions such as imposing reasonable zoning requirements,³⁰ requiring payphone service providers to register as a prerequisite to doing business in a state,³¹ or identifying areas where no competitor can place a payphone.³² The FCC made it clear, however, that a state "cannot draw distinctions that allow some class of competitors to enter the payphone market and not others."³³ The plain language of the FCC's Payphone Orders shows that this prohibition applies with equal force to exit requirements – in other words, a state cannot draw distinctions that allow some class of competitors to exit the payphone market and not others. This Commission has allowed numerous payphone service providers to exit the market without waiting for the Commission to decide whether to revisit its prior public interest payphone determination. Thus, it is impermissible for the Petitioner to now ask the Commission to treat BSPC differently by requiring it to remain in a competitive market in which it no longer wishes to compete until the Commission decides whether to revisit that prior determination.

³⁰ Payphone Reconsideration Order at ¶140.

³¹ *Id.*

³² *Id.*

³³ *Id.*

IV. IF THE COMMISSION DECIDES TO ADDRESS THE PETITIONER'S REQUEST THAT THE COMMISSION REVISIT ITS PRIOR DETERMINATION THAT NO PUBLIC INTEREST PAYPHONE PROGRAM IS NECESSARY, THE COMMISSION SHOULD DO SO IN A SEPARATE DOCKET AFTER THE MARKET HAS HAD TIME TO ADJUST TO BSPC'S EXIT.

The Petitioner has asked the Commission to "initiate a proceeding to establish a public interest payphone program that will fairly and equitably fund support for such payphones."³⁴ The Commission, however, already has determined that there is no need for a public interest payphone program in South Carolina.³⁵ The Petitioner, therefore, acknowledges (as it must) that it is asking the Commission to reconsider its prior determination on this issue.³⁶

BSPC is not suggesting that the Commission cannot reconsider that prior determination, if that is something that the Commission is inclined to do. If the Commission is so inclined, however, it should wait until after BSPC has exited the marketplace before revisiting that prior determination. At least three reasons support this approach. First, as explained above, any requirement that BSPC remain in the market while the Commission revisits its prior determination would impermissibly inhibit BSPC's exit from the competitive payphone marketplace in violation of federal law. Second, even if that were not the case, the Commission cannot appropriately designate

³⁴ See Motion to Hold Proceeding in Abeyance at p.4. *Accord*, Petition to Intervene at p. 3.

³⁵ In its Payphone Order, the FCC required State commissions to "evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist," and it required the State commissions to complete this review by September 1998. See Payphone Order at ¶285. On September 23, 1998, the Commission sent a letter informing the FCC that, "based in part on the definition of 'public interest payphone' as set forth in [paragraph 181 of the Payphone Order]," the Commission "has determined that there is no need for a 'public interest payphone' program in South Carolina at this time." Attachment B is a copy of that letter.

³⁶ See Motion to Hold Proceeding in Abeyance at 3, n.1.

any payphones as "public interest payphones" until after the market has adjusted to BSPC's exit. Third, BSPC's exit will not inhibit the Commission's ability to establish and fund a public interest payphone program if that is what the Commission ultimately decides to do.

A. Any Requirement That BSPC Remain in the Competitive Payphone Marketplace While the Commission Revisits its Prior Determination Would Impermissibly Inhibit BSPC's Exit from the Competitive Payphone Marketplace in Violation of Federal Law.

This argument is addressed in Section III above.

B. The Commission Cannot Appropriately Designate Any Payphones As "Public Interest Payphones" Until After The Market Has Adjusted to BSPC's Exit.

While the "primary responsibility for administering and funding of public interest payphone programs should be left to the states,"³⁷ any such administration and funding established by a State must be "consistent with the requirements described [in the Payphone Order]."³⁸ In the words of the FCC:

While we leave the administration of public interest payphones to the states, we believe that the 1996 Act requires us to impose minimum guidelines for establishment of a public interest payphone program to meet our statutory obligation to ensure the maintenance of such payphones. In particular, we believe it is very important to establish a basic definition of public interest payphones that is narrowly tailored to payphones that are truly needed for the public interest reasons enunciated in the statute.³⁹

Thus, as the Petitioner acknowledges in its Motion to Hold Proceedings in Abeyance,⁴⁰ the FCC has ruled that a "public interest payphone" is one that "(1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider

³⁷ Payphone Order at ¶280.

³⁸ *See Id.* at ¶285.

³⁹ *Id.* at ¶281 (emphasis added).

⁴⁰ *See* Motion to Hold Proceeding in Abeyance at p. 2, ¶4.

with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace."⁴¹

The FCC has emphasized that in deciding whether and how to establish a public interest payphone program, a State commission may not stray from this definition of "public interest payphone." The Payphone Order explicitly states that "a state may not require that a public interest payphone be installed on premises where a location provider already has a contract for the maintenance of a competitive payphone, even if such contract requires the location provider to pay for the continued maintenance of such payphone."⁴² Accordingly, payphones that some parties may want to argue are "public interest payphones" may not meet the controlling definition for one reason or another.

The Petitioner seems to suggest, for instance, that the payphone located at its premises is a "public interest payphone." As the Petitioner acknowledges, however, that payphone has been the subject of a contract between itself and BSPC.⁴³ Prior to BSPC's decision to exit the market, therefore, that payphone did not meet the definition of a public interest payphone. If the Petitioner enters into a contract with another payphone service provider after BSPC exits the market, that payphone will continue not to meet the definition of a public interest payphone.

⁴¹ Payphone Order at ¶282 (emphasis added).

⁴² *Id.* See also Payphone Reconsideration Order at ¶141 (Reiterating that a state may not rely on the funding mechanism for public interest payphones to support payphones that do not meet the criteria adopted by the FCC); *Id.* at ¶254 ("We think that this language makes it clear that Congress intended that public interest payphones not be placed in locations where they would compete with unsubsidized payphones, and the definition we adopted is intended to effectuate this congressional intent."); *Id.* at ¶255 ("contrary to Ohio PUC's argument, Congress did restrict the locations for which states could use the public interest payphone support mechanisms to subsidize the placement of a payphone.").

⁴³ See Petition at p.1, ¶2.

This is only one example demonstrating that the Commission cannot know which locations will and will not be under contract (and, therefore, may or may not qualify as a "public interest payphone") until after BSPC exits the market and the remaining payphone service providers compete for the locations BSPC has been serving. Similarly, the Commission cannot know which payphones "would not otherwise exist as a result of the operation of the competitive marketplace"⁴⁴ until after the competitive marketplace has had time to adjust to BSPC's exit from that market. For the Commission to do as the Petitioner suggests and attempt to designate public interest payphones before BSPC's exit, therefore, would be an inefficient use of the Commission's resources because, in all likelihood, those decisions would have to be revisited once again after the market adjusts to BSPC's exit.

Finally, even if there were no payphone on the Petitioner's premises, the Petitioner still has several options for obtaining telephone service at affordable rates. The Commission, for example, has ruled that "[s]helters whose principal purpose is to provide temporary (six to eight weeks) residential housing for individuals or families in crisis qualify for residential rates for up to 3 lines after purchasing at least 1 business line."⁴⁵ In a subsequent Order, the Commission further ruled that "Lifeline"⁴⁶ rates or Lifeline equivalences apply to transitional subsidized housing provided by the Women's Shelter of

⁴⁴ Payphone Order at ¶282.

⁴⁵ See, Order Addressing the Universal Service Fund, *In Re Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Order No. 97-753 in Docket No. 97-239-C at 16-17 (September 3, 1997).

⁴⁶ Lifeline is a "program designed to increase the availability of telecommunications services to low income subscribers by providing a credit to monthly recurring local service" for qualifying service. See BST General Subscriber Service Tariff A3.31.1.A. The total Lifeline credit available to an eligible customer in South Carolina is \$13.00. *Id.*, A3.31.1.C.

Columbia for low income persons who would otherwise be eligible for Lifeline rates."⁴⁷ Thus, even assuming that no other payphone service provider would place a payphone on the Petitioner's premises, the Petitioner can obtain a telephone line from BST for its constituent's use at rates of approximately \$3.00 per month.⁴⁸ If the Petitioner wants to prevent direct toll calls from being placed on that line, it could purchase Selective Class of Call Screening from BST for an additional \$1.10 per month⁴⁹ or, if the Petitioner wants to prevent both direct dial and operator handled toll calls from being placed on that line, it could purchase Customized Code Restriction Option number 1 from BST for an additional \$3.50 per month.⁵⁰ If the Petitioner further wants to block the delivery of its number when its constituents use that line, the Petitioner can either obtain permanent calling number delivery blocking from BST,⁵¹ or its constituents could use the *67 feature on a call-by-call basis at no charge.

C. BSPP's Exit Will Not Inhibit The Commission's Ability To Fund Any Public Interest Payphone Program It May Decide to Establish.

The FCC explained that if the application of its definition reveals the need for a public interest payphone program, then a state Commission must "ensure that such public interest payphones are supported fairly and equitably."⁵² It goes without saying, however, that in order to determine the amount of support that is required, a State

⁴⁷ See, Order Granting in Part and Denying in Part Petitions, *In Re Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Order No. 97-942 in Docket No. 97-239-C at 5 (December 31, 1997).

⁴⁸ BST's tariffed monthly rate for a 1FR in Rate Group 7 is \$15.40. See BST's General Subscriber Service Tariff A3.2.1.A.2.a.(2).(a). When the \$13.00 total Lifeline credit amount in South Carolina (see footnote 46 above) is applied to that rate, the net rate paid by the customer is \$2.40.

⁴⁹ See BST's General Subscriber Services Tariff A13.12.

⁵⁰ See BST's General Subscriber Services Tariff A13.20.3.A.1.

⁵¹ See BST's General Subscriber Services Tariff A13.19.3.A.10.

⁵² *Id.* at ¶283.

commission must first apply the FCC's definition of "public interest payphone" to determine how many (if any) payphones in a State meet that definition. Once that has been done, the FCC explained that there are many ways to provide any requisite support, including without limitation: requiring the payphone industry as a whole to provide such support,⁵³ "requiring the placement of unprofitable payphones as part of contracts with [payphone service providers] for the placement of profitable payphones on public property,"⁵⁴ providing funding from general revenues;⁵⁵ or using the state Universal Service Fund.⁵⁶ BSPC's exit from the market will not impair the Commission's ability to use one or more of these (or other) methods to fund any public interest payphone program it may decide to implement in a separate proceeding.

V. THE COMMISSION SHOULD DENY THE PETITION TO INTERVENE AND THE MOTION TO HOLD PROCEEDING IN ABEYANCE.

As explained above, the Petitioner is asking for permission to Intervene in order to ask the Commission to do something that federal law prohibits the Commission from doing – requiring BSPC to stay in the competitive payphone market longer than it desires. Moreover, the Petitioner's request that the Commission revisit its prior determination that no public interest payphone program is necessary in South Carolina is a matter that is entirely separate and distinct from BSPC's exit from the marketplace, and it should be treated as such. In fact, the Commission cannot appropriately address the Petitioner's request until after the market has had time to respond to BSPC's exit.

The Commission, therefore, should deny both the Petition to Intervene and the Motion to Hold Proceeding in Abeyance without prejudice to the ability of the Petitioner

⁵³ *Id.* at ¶279.

⁵⁴ *Id.*

⁵⁵ *Id.* at ¶283.

⁵⁶ *Id.* at ¶284.

(or any other interested person or entity) to move the Commission to revisit its prior public interest payphone determination in a separate and unrelated proceeding.

VI. ALTERNATIVE ANSWER TO THE PETITION TO INTERVENE

Although it is not required to do so in light of its foregoing motions, BSPC respectfully responds to the allegations set forth in the Petition to Intervene as follows:

1. BSPC is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Petition and, therefore, can neither admit nor deny those allegations at this time.

2. BSPC admits that in July 1996, it entered into a payphone location agreement with the Petitioner, the terms and conditions of which speak for themselves. BSPC is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in Paragraph 1 of the Petition and, therefore, can neither admit nor deny those allegations at this time.

3. BSPC admits that it sent the letters that are attached as Tab 1 and Tab 2 to the Petition. The terms of those letters speak for themselves.

4. BSPC denies the allegations set forth in Paragraph 4 of the Petition.

5. In response to Paragraph 5 of the Petition, BSPC responds that the federal statute and the FCC Order referenced in that paragraph speak for themselves, and BPSC denies the allegations set forth in Paragraph 5 of the Petition to the extent that they are inconsistent with BSPC's Response to and Motion to Deny the Petition to Intervene and the Motion to Hold Proceeding in Abeyance.

6. BSPC denies the allegations set forth in Paragraph 6 of the Petition.

7. BSPC denies that the Petitioner is entitled to any of the relief requested in either the Petition or the Motion to Hold Proceedings in Abeyance.

8. To the extent that any allegation in the Petition is not expressly admitted herein, it is denied.

CONCLUSION

For all of the reasons set forth above, the Commission should deny both the Petition to Intervene and the Motion to Hold Proceeding in Abeyance without prejudice to the ability of the Petitioner (or any other interested person or entity) to move the Commission to revisit its prior public interest payphone determination in a separate and unrelated proceeding.

Respectfully submitted,



Patrick W. Turner
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201

ATTORNEY REPRESENTING
BELLSOUTH PUBLIC
COMMUNICATIONS, INC.

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Re Access Charge Reform and Universal Service Reform
Cause No. 40785

Indiana Utility Regulatory Commission
September 18, 1998

Before McCarty, Klein, Ripley, Swanson-Hull, and Ziegner (all concurring),
Commissioners, and Colton and Gray, administrative law judges.

BY THE COMMISSION:

*1 The Telecommunications Act of 1996 ('TA96') discusses public interest payphones, and in Section 276(b)(2) states, 'the Commission [FCC] shall determine whether public interest payphones which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.'

In response to the above mandate, the FCC on September 20, 1996 adopted and released a 'Report and Order' in consolidated CC Docket Nos. 96-128 and 91-35 (FCC 96-388) adopting new rules and policies governing the payphone industry (the 'Payphone Order') [FN1]. In ¶ 282 of the Payphone Order, the FCC states:

We adopt as a definition of 'public interest payphone,' a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace.

In its Payphone Order, the FCC defines the role states will play in meeting the public interest payphone objectives of TA96. In ¶ 280, the FCC concludes 'the primary responsibility for administering and funding of public interest payphone programs should be left to the states.' In ¶ 283, the FCC leaves to the discretion of the states the manner in which public interest payphone programs are to be funded, 'so long as the funding mechanism, (1) 'fairly and equitably' distributes the cost of such a program, and (2) does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the 1996 Act.' Finally, in ¶ 285 the FCC directs each state to review whether it has adequately provided for public interest payphones in a manner consistent with the Payphone Order. Such review must be completed by each state within two years from the date of the Payphone Order (i.e., by September 20, 1998). In particular, each state should evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act, and that any existing programs are administered and funded consistent with the requirements of the Payphone Order. Section 276(c) of TA96 provides for state preemption to the extent that any state requirements are inconsistent with the

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ATTACHMENT A.

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FCC's regulations that are issued with respect to payphones. Each state is accordingly directed to examine and modify its regulations applicable to payphones and payphone service providers ('PSPs') and for purposes of ensuring fair competition through a competitive marketplace, to remove only those regulations that affect payphone competition, while remaining free to impose regulations on a competitively neutral basis to provide consumers with information and price disclosure. (Payphone Order, ¶ 60)

*2 This Commission held a series of technical conferences on March 11, March 25, April 15, and May 14 to discuss public interest payphones. After considering the parties' inputs, we formulated a definition for 'public interest payphones' and created an Application Form to be sent to the Commission if a public interest payphone is requested. A Docket Entry was issued on May 19, 1998 announcing that an evidentiary hearing would be convened on July 7, 1998 to hear the parties' comments on the definition and Application Form, and other public interest payphone issues set forth in Attachment A to the Docket Entry.

An evidentiary hearing was convened on July 7, 1997 at 9:00 a.m. in Room TC-10 of the Indiana Government Center South, Indianapolis, Indiana. The following parties were represented by counsel: Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana; Sprint Communications Company, L.P. and United Telephone Company of Indiana, Inc., collectively known as 'Sprint'; GTE North Incorporated and Contel of the South, Inc., collectively known as 'GTE'; and the Office of Utility Consumer Counselor ('OUCC').

All prefiled testimony was admitted into the record without objection and the parties conducted cross-examination. Mr. Hartman also asked certain questions of each of the witnesses. Based upon the evidence presented at the hearing, and being duly advised in the premises, the Commission now finds as follows:

1. Jurisdiction. In our March 26, 1997, Order, initiating this investigation, we found that the Commission had jurisdiction over the subject matter and parties to this proceeding. No party challenged the Commission's determination of jurisdiction. Moreover, in the FCC's Payphone Order, it is to be noted that the FCC directs each state to review whether it has adequately provided for public interest payphones in a manner consistent with the Payphone Order and complete such review within two years from the issuance date of the Payphone Order (i.e., on or before September 20, 1999). (Payphone Order, ¶ 285) In particular, the Payphone Order directs that each state should evaluate whether it needs to take any measures to ensure that payphones serving public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of TA96, and that any existing programs are administered and funded consistent with the requirements of the Payphone Order. (Payphone Order, ¶ 285)

Notice of the hearing in this Cause has been duly published as required by law. Accordingly, we reaffirm our previous determination that we have jurisdiction over the subject matter and the parties to this proceeding in addressing the subject of public interest payphones.

2. Matters to be Addressed in this Order. Pursuant to Section 276 of TA '96, the FCC's Payphone Order, and 47 CFR 64.1330 (which is quoted in Finding Paragraph No. 7 below), each state is required to do the following: (1) by September 20, 1998,

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determine whether there is a need to take any measures to ensure the existence of public interest payphones; (2) if there is such a need, determine how a public interest payphone program can be supported 'fairly and equitably;' and (3) modify or eliminate regulations applicable to payphones and payphone service providers ('PSPs') that are inconsistent with the FCC's Payphone Order and TA '96.

*3 In addition to addressing the above matters, we believe it is necessary to adopt a definition for the term 'public interest payphone.'

3. Adoption of Definition for 'Public Interest Payphones.' In order to satisfy the FCC that Indiana has examined public interest payphones as required, it is first necessary to define the phrase 'public interest payphone,' to reassure the FCC that we are addressing the type of payphone service they intend us to address. Following several technical conferences, the presiding officers proffered for comment a proposed definition of 'public interest payphone' in the May 19, 1998 Docket Entry. That proposed definition, a copy of which is attached to this Order as Attachment A, included seven Guidelines to be followed when interpreting the definition

At the July 7, 1998 evidentiary hearing, no party objected to or proposed any modifications to the proposed definition of 'public interest payphone.' With regard to the Guidelines, there was one suggestion. Sprint suggested that an eighth guideline be included that would state:

There is no other payphone located at the same address or within 1,000 yards unless the governmental agency demonstrates through a findings-of-fact procedure that such a geographic restriction is unreasonable.

After reviewing the comments of the parties, we adopt the definition of public interest payphones set forth in Attachment A to this Order. No party has offered any modifications to, or criticism of, this definition. Furthermore, this definition is virtually identical to the FCC's adopted standard, assuring that it is in compliance with the FCC's Payphone Order and TA '96. We also adopt the seven Guidelines that accompany the definition. Again, no party offered any modifications to, or criticism of, these Guidelines.

We reject Sprint's suggested eighth guideline. While the proximity of other payphones should certainly be a consideration in determining the need for a public interest payphone, we do not believe a fixed standard should be used; rather, proximity should be evaluated on a case-by-case basis.

4. Need for a Public Interest Payphone (PIP) Program in Indiana. With one exception, all of the parties presenting testimony at the July 7, 1998 hearing agreed there was no need for a public interest payphone program, arguing that the competitive marketplace is adequately taking care of the need for public interest payphones in Indiana. The OUCC disagreed. Although the OUCC thought it was too soon to establish a funding mechanism for a public interest payphone program, it insisted there was a need for such a program, and suggested in detail a procedure for determining the extent of that need. We summarize below the parties' testimony on these matters.

A. Positions of the Parties

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Ameritech Indiana. The witness for Ameritech Indiana was Mr. Fred A. Miri, Director-Regulatory Affairs in the Regulatory Policy Organization. Mr. Miri is responsible for assisting the Ameritech Payphone Services unit in implementing all state and federal requirements relating to pay telephones in the five Ameritech states. Ameritech Indiana submits that this proceeding initiated by the Commission has sufficiently addressed the requirements of TA96 and the FCC's Payphone Order and has fulfilled the Commission's responsibility of evaluating whether or not the provisioning of public interest payphones in Indiana is necessary. In this regard, Ameritech Indiana's position is that there is no current demonstrated need for public interest payphones in Indiana and that any such needs are currently being adequately met by the competitive payphone marketplace. Drawing on its experiences in the marketplace, Ameritech Indiana notes that through the competitive bidding process, a governmental entity may ensure that the payphone contracts it negotiates with PSPs will meet all the pay telephone needs of the communities it serves in the future. Citing to proceedings in other states, Ameritech Indiana observes that other states have concluded that no state program was necessary to support public interest payphones due to the competitive pay telephone market. [FN2]

*4 In the rebuttal phase of its testimony, Ameritech Indiana responded to various aspects of the testimony of the OUCC. Ameritech Indiana disagreed with the OUCC's assessment of the need for public interest payphones in Indiana. To Ameritech Indiana's knowledge, there have been no instances where the State of Indiana or any other state agency has been refused a public interest payphone in those locations identified by any such agency to Ameritech Indiana. Ameritech Indiana points out that the OUCC's witness, Mr. Rees, acknowledges no need for public interest payphones has been quantified for Indiana and that the OUCC's position is based on mere conjecture and unempirical generalizations. Ameritech Indiana's rebuttal testimony reemphasizes that, in those instances where Ameritech Indiana is the payphone provider existing contracts with a state agency permit the placement of additional payphones, including public interest payphones, on an ongoing basis as result of any current needs assessment made by any such state agency. Mr. Miri testified that if any additional payphones were now installed as public interest payphones, outside an existing contract, funding for such payphones would require support from general tax revenues or other sources, an outcome that in Mr. Miri's view would not be in the public interest.

Upon cross-examination by the OUCC, Mr. Miri confirmed that none of Ameritech Indiana clients' payphone needs have remained unmet or that any requested payphone locations have been rejected. Moreover, there have been no instances where the state or a governmental agency has been required to pay a portion of the expense of provisioning, maintaining or operating a payphone under contract with Ameritech. (Tr., pp. PIP 27-28) Ameritech Indiana states that the OUCC has not demonstrated that the competitive payphone marketplace is incapable of meeting public interest payphone needs of Indiana and the OUCC's recommendation for a public interest program should be rejected. In reply to further cross-examination by the OUCC, Mr. Miri testified that a 12 to 18 month period should be sufficient to gauge how well the competitive payphone marketplace was capable of meeting public interest payphones needs. Mr. Miri suggested that the Commission has used the complaint process to measure if any problems exist with regard to various utility activities and that such a process could be relied upon to monitor payphone provisioning activity. (Tr., PIP-29)

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GTE. GTE believes that the states are given the option by the FCC of allowing the deregulated payphone marketplace to function for a period of time before determining its success or failure to adequately provide payphone needs and before implementing and funding any PIP program when necessary. GTE thus believes this is the best way for the Commission to fulfill the requirements of TA96 and relevant FCC orders.

GTE notes that the practice of PSPs contracting with local and state governmental entities to provide payphone services on their premises creates an opportunity for such entities to include unprofitable (i.e. public interest) payphones within their jurisdictions under the same contract umbrella. Furthermore, such agencies could also directly contract with PSPs for placing subsidized public interest payphone locations in their jurisdictions or local civic organizations could fund such needs.

*5 Sprint. Mr. Bruce M. Greene, Manager-State Regulatory East with Sprint/United Management Company, testified on behalf of Sprint. Sprint believes that the best activities for the Commission at the present time with regard to public interest payphones is to take no action. As with the Ameritech Indiana and GTE witnesses, Mr. Greene testified that the competitive marketplace already has and will take care of the need for public interest payphones in Indiana as a result of the deregulation of the payphone industry.

Mr. Greene testified that if the Commission chooses to take action, the definition and guidelines developed by the Commission should be incorporated into 170 IAC 7-1.1-11 by altering such rule. Sprint suggests that the process the Commission has followed in this proceeding is adequate to fulfill the requirements of TA96 and the FCC. Sprint submits that the Commission was directed to review whether it has adequately provided for public interest payphones and that the record is clear that the Commission has made a thorough review and no further action is required or necessary.

In the rebuttal phase of its testimony, Sprint disagrees with the OUCC's recommendation for a public interest payphone program, suggesting that the OUCC is attempting to re-regulate a small portion of the payphone industry and encumber it with additional, restrictive regulation. Mr. Greene testified that the Commission should give the competitive marketplace an opportunity to meet the public interest payphone needs of Indiana communities without what it characterizes as the costly, burdensome and inappropriate encumbrances inherent with the re-regulation implied in the overall position of the OUCC. Sprint submits such a position will not serve the needs of the citizens of Indiana. In Sprint's view, the OUCC puts forth arguments for stricter regulation of a small segment of an industry, if indeed there was only one provider within that industry. However, Sprint points out in rebuttal that monopoly provisioning of payphones is a thing of the past and that the payphone industry is a competitive industry.

OUCC. The OUCC recommended that the Commission issue a generic order in this Cause establishing an initial Public Interest Payphone program for the State of Indiana. The OUCC took the position that a generic order would provide the flexibility required for the Commission to develop and implement an effective PIP program tailored to meet the specific needs of Indiana residents. The OUCC recommended that the Commission first adopt a definition of 'Public Interest Payphones' for the State of Indiana, then gather data to analyze the public need

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for PIPs before deciding whether or when to establish any explicit PIP funding mechanisms. The OUCC suggested that the Commission's basic plan should include guidelines for measuring public need for PIPs, processing requests for PIPs, selecting the best potential sites for PIPs, determining which payphone provider should place each PIP, providing for future maintenance of PIPs, and establishing review procedures for future PIP removals.

*6 The OUCC noted that, to date, the Commission has not required Indiana payphone providers to maintain records or submit reports to the Commission concerning the number and geographic location of payphone requests denied each year; nor has the Commission ever established or publicized procedures for government agencies and other interested persons to submit requests for public interest payphones to the Commission or to notify the Commission of rejected requests for public payphones. Since the OUCC was not aware of any studies or surveys measuring the need for PIPs in Indiana, the OUCC recommended that the Commission establish recordkeeping and annual reporting requirements for the payphone industry as the most cost-effective and efficient way to measure the unmet need for public payphones and/or PIPs in Indiana.

OUCC Principal Engineer Harold L. Rees testified that, based on his preliminary discussions with representatives of several state government agencies and considering the low basic telephone service penetration rates discussed below, there is an unmet need for public payphones, and a possible need for Public Interest Payphones, in certain areas throughout the State of Indiana. Mr. Rees also observed that MECs in other states have removed themselves from the payphone business and that Indiana ILECs have, in recent years, reported plans to remove unprofitable payphones, demonstrating the potential for future increases in the need for Public Interest Payphones if and when the competitive payphone market fails to meet public need for payphones. Mr. Rees also recommended an annual reporting requirement to track future changes in the need for Public Interest Payphones in Indiana.

Conceptually, the OUCC identified two areas where it expects to find a higher demand for Public Interest Payphones: (1) less affluent residential neighborhoods with low basic telephone service penetration levels, and (2) remote or isolated areas where immediate telephone access to emergency services could be required, such as in remote portions of public parks and campgrounds.

Mr. Rees presented historic data on telephone penetration rates in Indiana. He explained that the relationship the OUCC expects to find between low telephone penetration rates and actual need for PIPs could be affected by other factors, such as the present availability of public payphones, the area's average income and employment levels, or religious convictions of area residents that preclude use of modern telecommunication devices.

Mr. Rees noted that Indiana's penetration level for basic telephone service has been close to the United States average for several years. Recent figures show a 94.3% residential telephone penetration rate for Indiana, compared to a national average of 94.0% as of March, 1997. However, based on 1990 Census data, 13 of Indiana's 92 counties have residential telephone penetration rates of 90% or less. Therefore, the OUCC believes that those 13 counties could present a greater demand for PIPs than other counties in Indiana with higher household telephone penetration rates.

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*7 Mr. Rees testified that the most recent penetration rates reported for Indiana cities are based on information from the 1990 Census. At that time, 67 Indiana cities and towns had residential telephone penetration rates of 90% or less. Accordingly, the OUCC believes that those 67 cities and towns will demonstrate a greater demand for PIPs than cities with higher residential telephone penetration rates.

Mr. Rees suggested that since the OUCC expects to see a higher than average demand for PIPs in areas where poverty rates are relatively high, that case workers and other field representatives for the Department of Family and Social Services (formerly known as the 'Welfare Department') and other public and private agencies that administer low income assistance programs at the local level and interface daily with Indiana's most impoverished residents, could help the Commission and/or the PIP Committee identify areas that are most in need of PIPs.

Mr. Rees also contacted several state agencies with a state-wide field presence to identify areas with an existing need for Public Interest Payphones. He learned that changes in low-income assistance programs and periodic economic downturns can result in increased utilization of existing payphones and a need for improved payphone access in areas with low income levels and low penetration rates for basic telephone service.

Mr. Rees testified that the Indiana Department of Natural Resources (DNR) has payphones in close to 100 public facilities across the state, including state parks, fish and wildlife areas, state forests, reservoirs, and historic sites, to ensure 24-hour telephone access to emergency health and public safety services. Mr. Rees noted that, for the most part, the competitive payphone industry has satisfied DNR's demand for accessible public payphones. However, in recent years some payphone providers have removed or threatened to remove less profitable public payphones at locations such as the Potawatomi Inn (Tippecanoe River State Park), several remote locations at Spring Mill State Park, the Huntington Reservoir, Charlestown State Park, Raccoon Lake (Mansfield Launching Ramp), Shakamak State Park, and the Fort Harrison Golf Course. These locations could also require placement of Public Interest Payphones to meet the public's emergency health and safety needs.

Mr. Rees also reported that the Indiana State Police identified at least a dozen potential PIP sites without conducting any formal research studies. The sites included weigh stations along Indiana's interstate highway system, which are used by truck drivers and other vehicles that pull off of highways during emergencies. The State Police and the Indiana Department of Transportation (INDOT) indicated that public payphones are needed at those sites. However, according to the State Police, some Indiana payphone providers are in the process of removing payphones from weigh station facilities, creating a potential need for PIPs at those locations.

*8 Mr. Rees testified that persons he contacted at the State Emergency Management Agency (SEMA) suggested that PIPs be considered for National Guard armories, which are designated as public emergency shelter points in case of public disasters such as storms and floods.

Mr. Rees also reported that employees of the Indiana Department of Workforce Development (DWD) suggested that PIPs could help alleviate the public

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communications problems at Workforce Development offices around the state.

The OUCC recommended that the following steps be taken to measure the need for PIPs in Indiana. First, Mr. Rees recommended a review of recently abandoned payphones sites to determine why payphones were removed from those locations (e.g., vandalism, low profitability, decreasing demand, or changing public needs). Such a review could help identify sites where public interest payphones are presently needed.

Second, the OUCC recommended that areas with low residential telephone penetration rates be identified and that current penetration rates for those areas be compared to the total number of payphones in the vicinity to identify areas where payphones have, in essence, become an extension of universal service, substituting for in-home local telephone service.

Third, the OUCC recommended a review of future payphone applications that are rejected by Indiana payphone providers. One purpose of the review should be to identify areas where PIPs might be needed for access to emergency services. Redundant, excessive or frivolous requests would also be screened out during the review process. If payphones have been removed for reasons related to crime, that information should be reported to local law enforcement officials.

Fourth, the OUCC recommended that a PIP application process be established to identify and measure the need for Public Interest Payphones in Indiana on a going-forward basis. The OUCC approved the content of the Commission's proposed PIP application form, but recommended adding a question to determine whether the proposed PIP site is located in an area with low residential telephone penetration rates. The OUCC also noted that, if the application process is to provide an effective measure of public need for PIPs in Indiana, the application process must be adequately publicized throughout the state.

Therefore, the OUCC recommended that the Commission require the telecommunications industry to fund state-wide educational and promotional programs to increase public awareness of the Public Interest Payphone application process. Specifically, the OUCC recommended that written notices concerning the PIP application process be provided each year to various state, federal and local government agencies. The OUCC also offered to conduct PIP public informational campaigns, assuming necessary funding is provided.

In its testimony, the OUCC agreed that Indiana's payphone industry should be encouraged and, where possible, contractually required to provide payphone coverage at marginal locations. If such voluntary industry efforts and contractual commitments satisfy the public's need for PIPs, there would be no reason for the Commission to establish explicit PIP funding mechanisms. The OUCC recommended that promotional mailings be sent to the government agencies and other persons or businesses that contract with payphone providers for the placement of public payphones in Indiana, encouraging them to contractually require the placement of payphones at proposed PIP sites before granting future service contracts for profitable payphone sites. Payphones placed as a result of such negotiations would not be classified as PIPs and would not be subject to PIP guidelines or future funding requirements. However, the OUCC recommended that the Commission consider tracking such placements since they will reduce the need for PIPs in those areas.

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*9 Fifth, the OUCC testified that the Commission needs to develop a plan for processing PIP applications, once submitted. The plan should include the formation of a PIP committee, an appropriate annual meeting schedule, and the desired meeting format. The OUCC recommended that PIP committee membership include representatives of the IURC, the OUCC, incumbent LECs, Indiana payphone providers, and other interested state or local government agencies, such as Family & Social Services (FSS), the Indiana State Police (ISP), the Indiana Department of Workforce Development (DWD), the Indiana Department of Natural Resources (DNR), the Indiana Department of Transportation (INDOT) and the State Emergency Management Association (SEMA). The OUCC recommended that payphone providers be required to report denials of requests for public payphones to the Commission's Telecommunications Division and the OUCC on a quarterly basis using a pre-approved standard PIP denial report form and that, starting in August of 1999, PIP denial reports be reviewed semi-annually at informal public meetings conducted by the IURC's Telecommunications Division. Direct notice of such meetings should be provided via facsimile, mail or authorized electronic posting (such as the ERMIS Bulletin Board) to all counsel of record in Cause No. 40785 and provided via facsimile or mail to all registered Indiana payphone service providers, all members of the PIP Committee, and all government agencies, offices or individuals whose requests for PIPs were denied during the prior 6-month period.

Sixth, to ensure competitive neutrality, the OUCC also recommended that the Commission require all Indiana payphone providers to register with the Commission to ensure that all such providers receive notice of future Commission rules and orders concerning payphones and PIPs. Such industry-wide registration would permit the Commission to identify potential PIP providers and possible sources of future PIP funding. The OUCC recommended that the Commission also require payphone providers to file lists indicating where each company's existing payphones are located throughout the State of Indiana, together with the phone number assigned to each payphone. The lists would be updated annually and would be afforded confidential treatment due to the proprietary nature of the information. Such information would permit the Commission to determine the proximity of existing, competitively placed payphones to proposed PIP sites.

Seventh, the OUCC testified that the primary purpose of Public Interest Payphones could be thwarted if PIP providers raise prices for local calls. For this reason, the OUCC recommended that the Commission either establish a price ceiling of 35 cents per call for PIPs or establish a rule that local call prices for PIPs be no higher than the average local call price charged by Indiana's largest payphone provider. By definition, PIPs would not be provided at competitive payphone sites in Indiana. Therefore, setting a price cap for PIPs would not violate FCC local call pricing ground rules for payphones placed through a competitive market process. [FN3]

*10 Eighth, the OUCC recommended that PIPs not be removed without prior approval from the IURC, its Telecommunications Division and/or the PIP committee. PIP providers should be required to submit written requests to the IURC Telecom Division and serve copies on the OUCC and the government agency that sponsored the original request for a PIP. The OUCC recommended that the notice include the reason(s) for the proposed removal. If the PIP Committee or the Commission approves the removal, but determines that a public need still exists for a PIP at a given location, the OUCC recommended that the IURC Telecom Division arrange for an alternate provider to install a replacement PIP at the time of the scheduled

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removal.

Ninth, the OUCC also noted that, since payphone providers in general experience problems with vandalism from time to time, PIP providers are likely to encounter similar difficulties. Due to the potential for vandalism, the OUCC recommended that the Commission also establish guidelines for removal, replacement, repair and associated cost recovery for PIPs that are damaged by vandals. The guidelines should address the number of times that PIP funding should be made available to replace or repair a PIP at a location that has been the subject of multiple acts of vandalism.

The OUCC noted that, in cases involving recurring acts of vandalism, the PIP Committee and/or the Commission might be required to decide whether the existing public need for a PIP justifies continued PIP support at that location or continued incurral of replacement and repair costs. If repeat vandalism is a problem in areas with low residential telephone penetration rates, nearby relocation options should be considered. The OUCC recommended that such decisions be handled, at least initially, on a case-by-case basis, until the PIP Committee and/or the Commission gain a better understanding of the need for PIPs and the actual costs caused by acts of vandalism.

Tenth, the OUCC recommended that, as experience is gained, the Commission should consider future changes to Indiana's PIP program using supplemental generic orders. Recognizing the need for a flexible, evolving review process, the OUCC recommended that the Commission conduct annual reviews of the PIP program during the first three (3) years after its introduction. The OUCC also recommended that if, at any time, the IURC Telecom Division, the OUCC, governmental entities or agencies sponsoring requests for PIPs, ten (10) PIP end users, ten (10) payphone service providers, or other interested Parties of record in Cause No. 40785 file requests for further review, the IURC should reopen its generic PIP proceeding to determine what, if any, changes should be made to existing policies, procedures, and other aspects of Indiana's PIP program.

The OUCC recommended that the Commission address only the need for PIPs at the present time and delay consideration of explicit PIP funding alternatives until the need for such funding is confirmed. At such time, the Commission should be able take a more principled approach to selecting appropriate PIP funding mechanisms, since its decision would be based on actual demand and usage data gathered over time.

*11 The OUCC noted that, if explicit PIP funding is ultimately required, the Commission will need to determine the appropriate level of funding, establish safeguards to prevent unfair gaming of the system, and promote competitive neutrality. Although the OUCC identified possible future funding alternatives (e.g., the intrastate universal service fund, annual assessments against payphone providers or other targeted taxing options). However, the OUCC recommended that an analysis of funding alternatives be postponed until the actual need for PIPs has been measured and assessed so that appropriate funding alternatives can be selected with regard to the nature of the public need that is being met. The OUCC gave the following example. If the assessment of public need shows that most PIPs are needed for random, emergency purposes only, funding through general tax revenues might be most appropriate. However, if the public need assessment shows that PIPs are generally used as substitute phone service by persons without

in-home local telephone service, universal service funding might be the most appropriate funding alternative.

Absent essential information on the nature and extent of the need for PIPs in Indiana, the OUCC recommended that the most appropriate funding option(s) not be selected until the level and type of need is established through the review process presented above. Therefore, applications for PIPs and the additional data discussed above should be processed without any predetermination of funding levels or sources.

B. Discussion and Findings. In its Payphone Order, the FCC directs each state to evaluate whether measures need to be taken to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the TA-96, and that any existing programs are administered and funded consistent with the requirements of the Payphone Order.

The Commission's Rules already require telephone utilities to provide payphones where necessary to serve the needs of the public. That Rule, found in the Commission's Service Standards at 170 IAC 7-1.1-11(L)(2) provides:

(2) Except as provided in paragraph (1) above, a utility may not be required to provide coin public telephone service at locations where revenues derived therefrom are insufficient to support the required investment unless reasonable public requirements relating to health, safety or welfare will be served. Outdoor public coin telephones should be lighted during the hours of darkness if power is available and should be located in a place which offers maximum protection from vandalism.

As we will discuss later below, the FCC's Payphone Order requires us to abrogate this Rule. Accordingly, we must determine, as provided in Section 276 of TA '96, whether the above payphone program should continue to exist, and if so, what measures should be taken to preserve it. The industry's position is that no program is needed; the marketplace will satisfy public interest needs. The OUCC counters that a program is necessary, arguing that low telephone penetration rates in several areas of Indiana strongly indicate the need for public interest payphones, and several governmental agencies have indicated directly to the OUCC that public interest payphones are needed.

*12 We do not want to base our decision on either the industry's vague assurances or the OUCC's speculations about unsatisfied demand. Instead, we focus on those payphones, currently in service, that meet the new definition of Public Interest Payphone. We heard evidence that Sprint presently has 13 payphone locations (out of 1,750) that qualify as PIPs. GTE indicated that fewer than 2% of its 6700 paystations, which for convenience we quantify as 130 payphones, would qualify as PIPs. Thus, at present, there are roughly 143 payphones in Indiana that qualify as PIPs, not including any PIPs that are included in Ameritech Indiana's contracts with government agencies. While no evidence was presented by the industry that would indicate whether or not those 143 payphones were put in service pursuant to the requirements of 170 IAC 7- 1.1-11(L)(2), it is reasonable to assume that, absent some form of regulation, there is no way to ensure that those 143 payphones will continue to be kept in service. The industry may promise to 'let the marketplace handle it,' but absent specific promises about specific locations,

there would be nothing to prevent LECs from taking those payphones out of service. If there is a possibility that any of those payphones may be taken out of service, we believe the public's health, safety, and welfare would be served by implementing a new PIP program to replace the program established by 170 IAC 7-1.1-11(L)(2). Accordingly, we find that, pursuant to section 276 of TA '96 and the FCC's Payphone Order, a new PIP program should be implemented to ensure that payphones meeting the definition of a PIP will continue to exist, and to ensure that as new PIP locations are identified, they, too will be served.

To accomplish the above goals, we find that the following procedures should be followed:

Any person (including both individuals and organizations) may request the placement of a PIP at a given location, and should make such a request by filing a PIP Application Form with the Commission's Consumer Affairs Division. Upon reviewing the Application, the Consumer Affairs Division should determine whether the proposed location satisfies the definition of a Public Interest Payphone, as adopted herein. If there is insufficient information to make that determination, the Division may use whatever means it deems necessary to gather the information necessary to make its determination. If the Division determines that the proposed location satisfies the definition of a PIP, the Division should contact the Payphone Service Providers (which includes both LECs and Independent Payphone Providers) serving the area in which the proposed location is sited and request that one of them provide service within 90 days, unless good cause is given for a longer period of time. (If no PSP is willing to provide service, we will take steps to formally fund the PIP program as described in Finding Paragraph No. 5 below.) If instead the Division determines that the proposed location does not satisfy the definition of a PIP, the Division should so notify the Applicant and inform the Applicant that it has the right to file a docketed case with the Commission seeking a review of the Division's determination.

*13 The parties were asked to comment on a proposed PIP application form that was developed using input from technical conferences. No party had any objections to the proposed form. The OUCC, however, did request that an additional question be added inquiring about the telephone penetration rate for the area in which the proposed payphone would be located. We agree that such question should be included on the PIP Application Form. Attached to this Order as Attachment B is a copy of the PIP Application Form we find should be used by the Consumer Affairs Division in processing PIP requests. The adopted Form is essentially the same as the proposed form that was reviewed by the parties. It should be noted that the PIP Application Form includes a number of subjective questions. For example, one question asks why a payphone will support the public health, safety, or welfare. Another asks if the proposed payphone will be in proximity to other existing payphones. With regard to these and other matters, the Consumer Affairs Division should use its best judgment in making its determinations.

While the above procedures address the initiation of service for new PIP locations, a procedure is also needed to prevent the discontinuation of service to existing PIP locations. Because we do not know whether a given payphone location would qualify as a PIP location, we find that every PSP should inform the Commission's Consumer Affairs Division 30 days before it discontinues service to any payphone location. The PSP should also inform the Division whether it believes the location would qualify as a PIP. If upon further investigation the

Division believes the location may qualify as a PIP, the location should be kept in service by the PSP for an additional 90 days, or until another PSP agrees to serve the location, whichever comes sooner.

5. Funding for a PIP program. In general the parties all agreed that it is too soon to establish a procedure for funding a PIP program. Their specific recommendations are summarized below:

A. Positions of the Parties.

Ameritech. Mr. Miri testified that if any additional payphones were now installed as public interest payphones, outside an existing contract with Ameritech Indiana, funding for such payphones would require support from general tax revenues or other sources, an outcome that in Mr. Miri's view would not be in the public interest.

GTE. GTE believes to be complete any such program must be funded. Such funding in GTE's view should be separate and apart from a universal service fund established to support high cost and low income residential and business customers. GTE recommends a separate fund be established and funded through a public interest payphone surcharge assessed upon all rate payers in Indiana, not solely from PSPs.

Sprint. Sprint disagrees with the OUCC's recommendation for a public interest program, suggesting that the OUCC is attempting to re-regulate a small portion of the payphone industry and encumber it with additional, restrictive regulation. Mr. Greene testified that the Commission should give the competitive marketplace an opportunity to meet the public interest payphone needs of Indiana communities without what it characterizes as the costly, burdensome and inappropriate encumbrances inherent with the re-regulation implied in the overall position of the OUCC. Sprint submits such a position will not serve the needs of the citizens of Indiana.

*14 OUCC. The OUCC recommended postponing an analysis of funding alternatives (e.g., intrastate universal service fund, annual assessments against payphone providers or other targeted taxing options) until the actual need for PIPs has been measured and assessed, so that appropriate funding alternatives can be selected with regard to the nature of the public need that is being met. The OUCC further recommends that the Commission should require the telecommunications industry to fund state-wide educational and promotional programs to increase public awareness of the public interest payphone application process. The OUCC expressed a willingness to plan and implement the informational campaign once funded. In response to questions from Mr. Hartman, Mr. Rees acknowledged that he had not estimated what the total cost or expense would be for such an Educational and Promotional Program. (Tr., PIP-63) The OUCC also recommends a registration requirement for all PSPs in Indiana and annual reporting requirements for all PSPs to the Commission including information as to telephone numbers for, and geographic locations of, all Indiana payphones.

B. Discussion and Findings. TA '96 mandates that any method for funding PIPs be 'fair and equitable.' At this time, we have not yet conducted any hearings to determine a 'fair and equitable' method for funding PIPs, nor have any of the

parties herein suggested that we do so. The OUCC makes the practical recommendation that it would be best to first gauge the need and cost of PIPs before structuring a funding mechanism, and we agree.

We note with interest that none of the parties currently serving PIP locations have advocated devising a method for sharing the current cost of those locations. We take this as an indication of their willingness to continue shouldering those costs, perhaps out of a sense of civic duty, or perhaps due to a concern that the cost of regulation would outweigh the cost of continuing to serve those PIPs. It would be our preference that those parties, and other PSPs, continue funding PIPs voluntarily.

Because we have not yet devised a 'fair and equitable' method for funding PIPs, we will not order any PSP at this time to serve a proposed or existing PIP location. However, we stress that if no PSP agrees to serve a given PIP, we will immediately convene hearings to impose whatever funding mechanisms are appropriate and consistent with TA '96.

If the PSPs decide that as an industry they would like to devise their own method of allocating PIP costs, we would be willing to facilitate any discussions and meetings that might be necessary.

6. Publicizing the PIP program. The OUCC recommends the development of a comprehensive program of notification including state agencies with a broad field presence throughout the state, such as the Indiana Department of Family and Social Services, the Indiana Department of Natural Resources, the Indiana Department of Transportation, the Indiana Department of Workforce Development, the State Emergency Management Agency, and the Indiana State Police, with local distribution of PIP application forms being coordinated through the agencies' headquarters in Indianapolis. The OUCC suggests that additional direct mailings might be given to local government agencies and officials at the county, township, and city levels. (See, Rees, Ex. 1, pp. 16-18.) The OUCC also asked the Commission to force the payphone industry to fund the publicity campaign.

*15 A public interest payphone program similar to the one being implemented today has been in effect since 1979. However, because it was never actively publicized, it is difficult to draw any conclusions about the demand for the program. Recent regulatory and technological changes, however, might lead one to expect the demand for PIPs to decrease. For example, with the deregulation of the payphone industry, it is reasonable to expect an increase in the total number of payphones available to the public. In addition, the institution of the Lifeline and Link Up programs pursuant to our November 5, 1997 Order in this Cause would seem likely to increase the penetration of residential telephones, and thereby decrease the need for payphones, in lower income areas. With regard to technology, the advent of wireless and cellular telephone systems, including pre-paid cellular phone cards, might lead most observers to expect the public's need for payphones (including PIPs) to actually decrease instead of increase.

Notwithstanding our discussion above, we fully support any efforts the OUCC might make to publicize the PIP program; the greater the public awareness of the program, the better the public interest will be served. However, we will not compel funding for a PIP publicity program unless it is done in a 'fair and equitable' manner, and a hearing would have to be convened to determine how this

would be done. Therefore, for the time being, we propose several alternative means of publicizing the program. First, the OUCC has recently concluded a campaign publicizing the Lifeline and Link Up programs mentioned earlier. Undoubtedly, many of the social organizations that were contacted would also be interested in the PIP program. We suggest that the OUCC reestablish those contacts and inform them of the PIP program. The OUCC could also inform the various state agencies headquartered in Indianapolis. Second, we direct our Public Information Officer to post a description of the PIP program on the Commission's website, along with a copy of the PIP Application Form. Third and last, we find that every LEC and PSP should, upon denying a request for a payphone, fill out a 'Report of Denial of Request for Payphone, ' (the form originally proposed by the OUCC has been modified slightly) which has been attached to this Order as Attachment C, and forward that report to the Commission's Consumer Affairs Division. The Division is then instructed to contact the payphone applicant, and if the location may qualify as a PIP, forward a PIP Application Form to the applicant.

If and when hearings are convened to determine a fair and equitable method of funding PIPs, we direct the presiding officers to also inquire into the cost and propriety of different means of publicizing the PIP program.

7. Modification/Abrogation of Existing Payphone Regulations or Standing Orders of the Commission Related to the Provisioning of Payphone Service. As part of the FCC's Payphone Order, the FCC promulgated rules amending Title 47 of Part 64 of the Code of Federal Regulations that added Section 64.1330 that reads as follows:

***16 64.1330 State Review of Payphone Entry and Exit Regulations and Public Interest Payphones.**

(a) Each state must review and remove any of its regulations applicable to payphones and payphone service providers that impose market entry or exit requirements.

(b) Each state must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all payphones at no charge to the caller.

(c) Each state must review its rules and policies to determine whether it has provided for public interest payphone consistent with applicable Commission-guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission's implementation of Section 276 of the Communications Act, and administer and fund such programs so that such payphones are supported fairly and equitably. This review must be completed by September 20, 1998.

Keeping in mind these FCC directives, we address the following matters:

1. Rule 170 IAC 7-1.1-11(L).

Rule 170 IAC 7-1.1-11(L) requires each telephone utility to supply at least one coin-operated public telephone in each exchange that utility serves. The rule specifically states:

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(L) Public Telephone Service. (1) Each utility shall, where practicable, supply at least one (1) coin public telephone in each exchange that will be available to the public on a twenty-four (24) hour basis. This coin public telephone shall be located in a prominent location in the exchange and shall be lighted at night.

(2) Except as provided in paragraph (1) above, a utility may not be required to provide coin public telephone service at locations where revenues derived therefrom are insufficient to support the required investment unless reasonable public requirements relating to health, safety or welfare will be served. Outdoor public coin telephones should be lighted during the hours of darkness if power is available and should be located in a place which offers maximum protection from vandalism.

GTE, Sprint and Ameritech Indiana all agreed that 170 IAC 7-1.1-11(L) is a barrier to exit which the FCC's regulations require to be removed. (See 47 C.F.R. § 64.1330(a) above.) The OUCC did not disagree. Mr. Miri from Ameritech Indiana further argued that 170 IAC 7-1.1- 11(L) (2) is not competitively neutral, as it applies only to local exchange carriers and not independent payphone service providers.

After reviewing TA '96, the FCC's Payphone Order, and the parties testimony, we agree that 170 IAC 7-1.1- 11(L) is an exit barrier, and as such is no longer enforceable. We instruct our General Counsel to take the necessary steps to have this regulation deleted from our Service Standards.

2. Standing Commission COPT Orders. The Commission in its Order issued in Cause No. 38158, on November 25, 1987, permitting COPT providers to enter the public pay phone market in Indiana, set forth minimum criteria each COPT station was required to employ. Those criteria were:

1. Be registered with the Federal Communications Commission;
2. Comply with applicable federal, state, and local laws and regulations concerning the use of pay stations by disabled persons;
3. Provide Dial tone first;
4. Possess the ability to access the '0' Operator and 911 service (where available without the use of a coin or credit card);
5. Be able to provide credit card, collect, and third-party billed long distance calls without the use of a coin;
6. Provide accessibility to all inter-exchange carriers where equal access is provided;
7. May not limit the duration of a local call;
8. Provide one local telephone directory annually;
9. Present an informal message, which may be audio or visual, in, on, or adjacent to the COPT which explains its general operation.

(Order, Cause No. 38158, 11/25/87, p. 13)

*17 The Commission's Order as to Criterion No. 9 further required the COPT payphone to clearly display procedures to be followed when requesting refunds or reporting repair problems as well as the COPT provider's name, address and pricing and instructions for receiving a refund and/or reporting service problems. (Order, Id., pp. 13-14)

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Criteria Nos. 2,3 & 4 clearly satisfy the requirements of 47 CFR 64.1330(b). With regard to the remaining criteria, no testimony was presented that would justify their elimination. Because these nine criteria apply to all payphone providers we believe they are competitively neutral, do not violate TA '96 or the above FCC Regulations, and should therefore continue in effect.

8. Notice to FCC. We instruct the Secretary of the Commission to inform the FCC that this Commission has fulfilled the requirements set forth in 47 CFR 64.1330. A copy of this Order should be included.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:

1. The Secretary of the Commission shall send a letter informing the FCC that this Commission has addressed public interest payphones, as required by 47 CFR 64.1330, along with a copy of this Order.
2. The Secretary of the Commission shall send a copy of this Order to all Indiana LECs (both ILECs and ALECs), to the Indiana Payphone Association, and to every Individual Payphone Provider, to the extent their identity is known.
3. All Indiana LECs, IPPs and PSPs shall comply with the Findings contained herein regarding the discontinuance of payphones, as well as the refusal of new proposed locations, as set forth in Finding Paragraph No.4 herein.
4. The Public Information Officer of this Commission shall prepare a description of this program for inclusion on the Commission's website at www.state.in.us/iurc.
5. The Consumer Affairs Division of this Commission shall follow the procedures outlined herein for receiving and processing PIP Application Forms.
6. This Order shall be effective on and after the date of its approval.

Attachment A

Definition of a Public Interest Payphone

Public Interest Payphones are essentially payphones placed at locations where a payphone is required in the interest of public health, safety, and welfare, where there would otherwise not be a payphone. Public Interest Payphones may only be provided at the request or sponsorship of government entities or agencies.

Fundamental Guidelines of a Public Interest Payphone

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1. A public interest payphone is a payphone that generally does not 'break even', i.e. it does not yield sufficient revenue to recover the cost of its placement, ongoing maintenance, operation and reasonable contribution and therefore in a competitive market place would not normally be placed. It is important to note that unless there is a reasonable return allowed, there will be no incentive to bid on these phones.
2. There are no other coin operated (pay per use) public phones located at the same location, reasonably accessible to the general public.
3. The Public Interest Payphone is not part of a contract which provides direct monetary benefit to the location provider (i.e. the paying of commissions) from calls generated over that phone.
4. Public Interest Payphones are not coinless payphones.
5. If the payphone is located indoors, the location provider on whose property the payphone is located agrees to the placement of a prominent sign (outside and inside the facility), consistent with public ordinances, which directs the general public to the payphone location.
6. The general public should have unrestricted access to the Public Interest Payphone. Unrestricted access means that the payphone should be physically and geographically accessible to the general public during the operating hours of the facility. Thus, if the payphone is located inside a building, for example, the general public would be able to enter the building from the street to use the payphone.
7. If a Public Interest Payphone is proposed for property owned by a person or entity that has existing contracts for the placement of payphones at other locations, a demonstration should be made as to what efforts were made to contractually require placement of a payphone at the proposed Public Interest Payphone location.

Attachment B

APPLICATION FOR PUBLIC INTEREST PAYPHONE

***18** Please complete the attached application form for a public interest payphone. If you have questions regarding completion of the application form, please call the Consumer Affairs Division (1-800-851-4268). Incomplete application forms will be not be processed. Please mail the application form to: Indiana Utility Regulatory Commission Consumer Affairs Division 302 W. Washington St. Suite E306 Indianapolis, IN 46204

After the application form is received, someone may contact you with further questions. If the application form is denied, you may write a letter to the IURC and request a hearing. If the application for a public interest payphone is approved, the IURC will attempt to contact a company to provide that payphone. If no company is willing to provide the public interest payphone, we will contact you. Location Owner's Name/Title: _____ Business or Organization You Represent: _____ Phone Number: _____ Address of Requested Payphone Service: _____ Business Organization Name: _____ Contact Person at Business or Organization: _____

Name: _____
Phone: _____

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Address: ____

Type of Business: ____ Opening Date (if not open): ____ Please describe why a payphone is requested in terms of public health, safety, or welfare ____
____ Please identify the government agency who is sponsoring the location. ____

Is a low penetration rate for basic telephone service for households in the immediate area a factor in the nomination of this location for a public interest payphone?

Please circle: Yes No

If there is a payphone currently in operation at the proposed location, is it a coin-operated payphone?

Please circle: Yes No

If you are proposing a new location, will the payphone be a coin-operated payphone?

Please circle: Yes No

Will the payphone be part of a contract which provides direct monetary benefit to the location provider (i.e. the paying of commissions) from calls generated over that phone?

Please circle: Yes No If a payphone is proposed for property owned by a person or entity that has existing contracts for the placement of payphones at other locations, please explain what efforts were made to contractually require placement of a payphone at the proposed location before the application was submitted. ____

If there are other payphones on the property, is compensation paid to the owner or occupant of the property for these other payphones? Please circle: Yes No Don't Know

What are the hours the requested public interest payphone will be made available to the public?

From ____ a.m./p.m. To ____ a.m./p.m.

Please circle the days the public interest payphone will be available.

M T W T H F S S

Will the payphone be indoors or outdoors?

Please circle: Indoors Outdoors If indoors, does the property owner agree to the placement of a telephone company sign, outside the property, directing the general public to the location of the payphone? Please circle Yes No If No, Why not? ____
____ Will the payphone be located at a site where those residing in that location cannot individually subscribe to their own telephone service? Please

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Circle: Yes No If yes, please explain your understanding of the reason phone service is not available to those residing in the area. ____

*19 Will the payphone be located in an area where no other payphone is readily, effectively, or reasonably accessible to the general public?

Please Circle: Yes No

What is the approximate distance of the nearest payphone, the location, and provider? ____

To your knowledge, has there been a payphone at the proposed site before? Please circle: Yes No

If Yes, who was the provider? ____

If Yes, when was the payphone removed? ____

I declare under penalty of perjury that the foregoing information is true and correct.

Signature ____ Print Name ____ Title ____

Date ____ Number where you can be reached during business hours ____

Attachment C

Report of Denial of Request for Payphone

1. Name/Address of Payphone Provider Denying Request: ____

2. Payphone Provider Contact Person: ____

3. Contact Phone Number: ____

4. Name/Address of Requesting Party: ____

5. Name/Address of Business or Organization of Requesting Party: ____

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6. Phone Number of Requesting Party: ____

7. Address for Which Payphone Was Requested (include County/Township): ____

8. Date Payphone Request Received: ____

9. Date Evaluation Completed: ____

10. Reason for Denial of Request: ____

11. If the payphone provider has a contract(s) to provide payphone service on any government-owned property in the city, county, or township listed in response to questions 4 and 5 above, please answer the following:

A. Name/Address of contracting governmental entity and/or owner of public property: ____

B. Contact Person: ____

C. Contact Phone Number: ____

D. Date current contract was executed: ____

E. Date current contract expires: ____

FOOTNOTES

FN1 In proceedings construing Section 276 of the federal Telecommunications Act of 1996 ('TA96') relating to the provision of payphone service, the FCC issued several orders addressing, in part, public interest payphones: In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-128, FCC 96-388 (released September 20, 1996) ('Payphone Order') and Order on Reconsideration, CC Docket No. 96-128, FCC 96-439 (released November 8, 1996)

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('Reconsideration Order')

FN2 Ameritech Indiana cites to the public utility commissions for the states of Iowa, Missouri, North Carolina, Oklahoma, Oregon and Texas that have decided that there is no need to establish a public interest payphone program. Upon cross-examination, Mr. Miri also indicated that the state of Illinois has reached a similar conclusion. (Tr., PIP-22)

FN3 The Report and Order in CC Docket No. 96-128 Released September 20, 1996.

END OF DOCUMENT

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COMMISSIONERS
PHILIP T. BRADLEY, 4TH DISTRICT
CHAIRMAN
WILLIAM "BILL" SAUNDERS, 1ST DISTRICT
VICE CHAIRMAN



COMMISSIONERS
C. DUKES SCOTT, 2ND DISTRICT
RANDY MITCHELL, 3RD DISTRICT
H. CLAY CARRUTH, JR., 5TH DISTRICT
MIGNON L. CLYBURN, 6TH DISTRICT
C. ROBERT MOSELEY, AT LARGE

GARY E. WALSH
EXECUTIVE DIRECTOR

Phone: (803) 737-5100
Fax: (803) 737-5199

The Public Service Commission State of South Carolina

PO Drawer 11649
Columbia, SC 29211
Koger Executive Center
101 Executive Center Dr.
Columbia, SC 29210

September 23, 1998

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
1919 M. Street, N.W. Room 222
Washington, DC 20035

In Re: Public Interest Payphones

Dear Ms. Salas:

The purpose of this correspondence is to advise you of actions taken by the Public Service Commission of South Carolina (PSCSC) pursuant to Section 285 of FCC Order 96-388, CC Docket 96-128, issued September 20, 1996.

The PSCSC has determined that there is no need for a "public interest payphone" program in South Carolina at this time. This determination is based in part on the definition of "public interest payphone" as set forth in Section 282 of the First Report and Order.

If I can be of further assistance in this matter, please feel free to contact me.

Sincerely;

A handwritten signature in black ink, appearing to read "Gary E. Walsh". The signature is fluid and cursive, with a long, sweeping underline.

GARY E. WALSH
ACTING EXECUTIVE DIRECTOR

[REDACTED]

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
 COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Public Communications, Inc.'s Response to and Motion to Deny Petitioner's Motions to Intervene and To Hold Proceeding in Abeyance to be served upon the following this May 23, 2003:

F. David Butler, Esquire
 General Attorney
 S. C. Public Service Commission
 Post Office Box 11649
 Columbia, South Carolina 29211
 (PSC Staff)
(U. S. Mail)

Susan B. Berkowitz
 South Carolina Appleseed Legal
 Justice Center
 Post Office Box 7187
 Columbia, South Carolina 29202
 (Women's Shelter)
(U. S. Mail)

William J. Hines
 807 Walters Lane
 Columbia, South Carolina 29202
 (Women's Shelter)
(U. S. Mail)

Laura F.H. McDonald
 Stephen J. Rosen
 Marc A. Lindsey
 Levine, Blaszak, Block & Boothby, LLP
 2001 L Street, NW
 Suite 900
 Washington, DC 20036
 (Women's Shelter)
(U. S. Mail)

John F. Beach, Esquire
Ellis Lawhorne
1501 Main Street
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Columbia, South Carolina 29202
(SCPCA)



Nyla M. Laney

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